

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-214449

**DATE:** June 5, 1984

**MATTER OF:** Harvey A. Nichols Company

**DIGEST:**

Agency acted reasonably in permitting a bidder to correct an error in its total bid price, which failed to reflect an offered discount, even though the corrected bid displaced another bid, since the mistake and the intended bid price were substantially ascertainable from the invitation and the bid itself.

Harvey A. Nichols Company protests award of a contract to Rossetti Construction Company under invitation for bids (IFB) No. 83-194LA issued by the General Services Administration (GSA). The IFB solicited bids for a 1-year indefinite quantity contract for the repair and alteration of government buildings in Los Angeles, California. Nichols contends that Rossetti was improperly permitted to correct its bid, thereby displacing Nichols as the low bidder. We deny the protest.

**Background**

The IFB listed numerous individual work items, with descriptions and estimated quantities. For each work item, the solicitation contained estimated unit and extended prices prepared by GSA. Instead of pricing individual work items, bidders were simply required to insert a positive, negative, or "net" value percentage factor<sup>1</sup> for work to be performed during regular working hours, and for work to be performed during non-working hours, which were to be applied to GSA's pre-established total estimated prices (the sum of GSA's extended prices for all items in the solicitation) for each phase of work. The solicitation stated that the contract would be awarded to the responsive bidder with the lowest total evaluated bid price.

<sup>1</sup> A "net" value factor would mean that no percentage factor was bid.

GSA received eight bids. Nichols initially appeared to be the low bidder with a total price of \$2,543,949 (percentage factors of -14.565 percent for working hours, and -2 percent for non-working hours). The contracting officer, however, noted the following entries on Rossetti's bid form (the underlined portions are Rossetti's entries, and the others were pre-printed on the form):

"WORKING HOURS

Percentage Factor	<u>Minus</u>	<u>14.35%</u>	<u>(-14.35%)</u>
	(Plus or Minus)	(Written)	(Numerical)

\*Two Million, Three Hundred  
Five Thousand, Eight Hundred  
Sixty-Two Dollars and no/100\* Dollars (\$2,305,862.00)

In Words

NON-WORKING HOURS

Percentage Factor	<u>Minus</u>	<u>14.35%</u>	<u>(-14.35%)</u>
	(Plus or Minus)	(Written)	(Numerical)

\*Five Hundred Seventy-Six  
Thousand Four Hundred  
Sixty-Five Dollars and no/100\* Dollars (\$ 576,465.00)"

After reviewing Rossetti's bid, the contracting officer determined that Rossetti had made an apparent clerical mistake. GSA's total estimated prices as set forth in the solicitation for work during regular working hours and for work during non-working hours were \$2,305,862 and \$576,465, respectively, for a total price of \$2,882,327. Rossetti's final figures appeared simply to restate GSA's pre-established total estimated prices without adjustment for the percentage factor discounts shown. After obtaining confirmation from Rossetti that the entered percentage factors had to be applied to the final dollar figures to calculate the intended bid, the contracting officer corrected Rossetti's bid prices to total \$2,468,713, thereby displacing Nichols' bid of \$2,534,949. GSA therefore awarded the contract to Rossetti.

Protest

Nichols makes a number of specific arguments why Rossetti is not entitled to the contract award, which we

review below. The thrust of Nichols' complaint is that the rule that a bidder should not be permitted to correct its bid to displace the low bidder except where the original bid is responsive and the intended bid can be ascertained substantially from the invitation and the bid itself precludes correcting Rossetti's bid. Nichols contends that Rossetti's intended bid price is not ascertainable from the bid itself since the contracting officer admittedly contacted Rossetti to verify the firm's bid price.

### Analysis

Nichols is correct as to the general rule that governs the correction of a mistake alleged prior to award that would result in the displacement of a lower bidder: correction should be permitted only where the asserted correct bid is the only reasonable interpretation that can be ascertained from the bid itself. See 49 Comp. Gen. 48 (1969). For instance, in deciding questions involving such matters, we have denied correction where there was no way to tell from the bid whether a unit price or its discrepant extended total was correct and either would have been reasonable. Broken Lance Enterprises, Inc., 57 Comp. Gen. 410 (1978), 78-1 CPD ¶ 279. We also have denied correction where the asserted intent of an offered discount was not clearly ascertainable from the bid, and there were other reasonable interpretations. B&P Printing, Inc., B-188511, June 2, 1977, 77-1 CPD ¶ 387. Conversely, we have permitted correction of discrepant unit and extended prices where the alleged ambiguity admitted of only one reasonable interpretation substantially ascertainable from the bid. Engle Acoustic & Tile, Inc., B-190467, Jan. 27, 1978, 78-1 CPD ¶ 72.

We think GSA, by permitting correction of Rossetti's bid, properly followed the principle of this line of cases.

(1) Nichols argues that Rossetti's bid is ambiguous as to whether a positive or negative percentage factor was intended. Nichols suggests that by applying elementary algebra, the contracting officer should have realized that the two negative entries in Rossetti's bid ("minus" and (-14.35 percent)) equate to a positive value.

We find no merit to this argument. We think Rossetti clearly and unequivocally bid a negative percentage factor of 14.35, consistent with the solicitation's instructions. We do not think it is reasonable to assume that a bidder crafted its bid in algebraic terms when the solicitation required a simple positive or negative percentage factor.

(2) Nichols complains that Rossetti's entered total prices are not the discounted price allegedly intended. We agree with GSA, however, that in view of the clearly stated negative percentage factor, Rossetti simply erroneously repeated GSA's estimate, and that the bid intended for evaluation and award purposes should be calculated by applying the percentage factors actually bid. In this respect, the fact that the contracting officer contacted Rossetti to verify the firm's bid price does not establish that Rossetti's input was needed in order to determine the intended bid. See Marine Ways Corporation, B-211788, Aug. 29, 1983, 83-2 CPD ¶ 271. As stated, we believe that determination can be made substantially from the face of the bid itself. We therefore agree with the contracting officer that this matter was only an obvious and minor error that was properly correctable under the rules that govern mistake correction in a displacement situation. See Federal Procurement Regulations (FPR), 41 C.F.R. § 1-2.406-3(a)(2) (1983).

(3) Nichols argues that Rossetti's bid was nonresponsive because, contrary to the solicitation's instructions, Rossetti did not provide a written percentage factor in its bid, that is, "fourteen and 35/100 percent," but merely provided a numerical figure, "14.35%." However, we think this alleged defect is one of form, not substance, and is wholly insignificant.

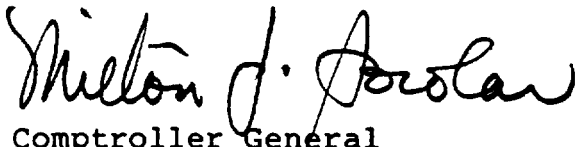
(4) Nichols alleges that Rossetti admitted to one of its subcontractors that it had made a mistake in bidding the same percentage factor for working and non-working hours. Nichols therefore demands that GSA investigate the matter and take appropriate action. GSA states that Rossetti has not alleged any such mistake, and that the contracting officer did not suspect any error because bidding the same percentage factor for both working and non-working hours is a common practice employed by bidders. Further, the contracting officer notes that Rossetti has verified its bid. We agree with the contracting officer; we do not believe that an agency has a duty to investigate unsubstantiated and speculative allegations of possible mistake where a bidder has verified its bid and the contracting officer has no reason to believe a mistake has been made. See Southwest Truck Body Company--Request for Reconsideration, B-208660.2, Dec. 28, 1982, 82-2 CPD ¶ 585; G.T. Murphy, Inc., B-204351, Feb. 23, 1982, 82-1 CPD ¶ 161.

(5) Nichols argues that after correction of Rossetti's bid, there is a discrepancy between Rossetti's bid bond and the corrected bid price, which would permit Rossetti to refuse to accept award of the contract should its interests so dictate. However, Rossetti's bid bond was not for a particular sum; rather, the penal sum of the bond was for 20 percent of the bid price and the bond was otherwise in order. We therefore fail to see any discrepancy between the bid bond and the corrected bid as a result of the downward correction.

(6) Nichols argues that permitting correction under these circumstances could lead to potential abuses by unethical bidders, which would compromise the integrity of the competitive bidding system. However, the regulatory requirement that corrections which displace other bidders be limited to those cases where, as here, the mistake and the intended bid can be ascertained from the bid itself, see FPR, 41 C.F.R. § 1-2.406-3(a)(2), serves as a safeguard against such abuse. Since the mistake in bid procedures here were strictly followed, the United States should have the cost benefit of the corrected bid. See 53 Comp. Gen. 232 (1973). ✓

(7) Finally, Nichols complains that it relied in good faith on representations by GSA that it was the low bidder entitled to award. Nichols states that it refrained from bidding on other projects, and notified its subcontractors to begin preparations for the work. Nichols, however, knew or should have known that its bid was being submitted under procurement regulations that permit displacement of low bidders under certain circumstances. Since established regulatory procedures were properly followed, and Rossetti is the actual low bidder, Rossetti is, as a legal matter, entitled to the award.

The protest is denied.

*for*   
Comptroller General  
of the United States